

Opinion No. 54-5926

March 29, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. R. G. Wheeler Acting Director Driver's License Division Santa Fe, New Mexico

{*372} We are in receipt of your letter of March 17, 1954, in regard to the question of revocation of driver's license for a conviction of reckless driving.

Section 68-319 N.M.S.A., 1941 Comp., sub-section (b) thereof reads as follows:

"Whenever any person holding an operator's or chauffeur's license shall be convicted upon the charge of reckless driving or speeding, or any misdemeanor in the commission of which a motor vehicle was used, the court may, in its discretion, suspend the license of such person for a period not to exceed ninety (90) days upon a first conviction, and for a period not to exceed six (6) months upon a second conviction, and for a period not to exceed one (1) year upon third conviction; provided, that any suspension of a license under this Act shall not be for period in excess of one (1) year."

This was Section 19 of Chapter 110 of the Session Laws of 1937. The Legislature in 1953, passed the amended Motor Vehicle Code and a part of that Code was § 68-2318, N.M.S.A., 1941 Comp., 1953 supplement. The Section above cited reads as follows:

"§ 68-2318. Reckless driving. -- (a) Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection {*373} and at a speed or in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving.

(b) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than 5 days nor more than 90 days, or by fine of not less than \$ 25 nor more than \$ 100, or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than 6 months, or by a fine of not less than \$ 50 nor more than \$ 1,000, or by both such fine and imprisonment."

"(c). Upon conviction of violation of this section the court or the commissioner of motor vehicles may suspend the license or permit to drive and any nonresident operating privilege for a period not to exceed 90 days."

The section last quoted deals with exactly the same subject matter as section (b) of § 68-319. The Courts do not favor repeal by implication, but where a later statute covers the same field as the former statute and those statutes are inconsistent, the former statute is repealed. See **Baca vs. Board of County Commissioners of Bernalillo County**, 10 N.M. 438, 62 P. 979; **Ellis vs. New Mexico Construction Company**, 27

N.M. 312, 201 P. 487; **Nye vs. Board of County Commissioners of Eddy County**, 36 N.M. 169, 9 P. 2d 1023; **Geck vs. Shepard**, 1 N.M. 346; **State vs. Melendrez**, 49 N.M. 181, 159 P. 2d 768. Thus it seems that the two provisions pertinent to this question are penalty sections for the misdemeanor reckless driving. The Court must either attempt to reconcile the two or hold that the later section repeals the former. It is obvious that the later section cannot be reconciled with the former, therefore the later section is the current law in New Mexico.

Therefore it is the opinion of this office that the Section 68-319 (b) thereof is repealed by Section 68-2318, and the revocation of a driver's license can be for a period not to exceed 90 days, and such suspension may be done by either the Court or the Commissioners of Motor Vehicles.

By: Fred M. Standley

Assist. Attorney General